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Attorneys for Plaintiff
ADELINA HERNANDEZ

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

Case No.:

ADELINA HERNANDEZ, an individual

COMPLAINT

Plaintiff,

CLAIMS FOR RELIEF:

vs.

1. Violation of ADA & NRS 613.330;

CAPITAL ONE SERVICES, LLC, a Nevada
corporation; DOES I thru V, inclusive; ROE
CORPORATIONS I thru V, inclusive,

**2. Retaliation re: ADA, Title VII & NRS
613.340**

Defendant.

JURY DEMAND

Plaintiff, ADELINA HERNANDEZ (hereafter "Hernandez"), hereby files her Complaint
against CAPITAL ONE ("The Company" or "Defendant") as follows:

THE PARTIES

1. Hernandez is, and at all times relevant to this action was, a bona fide resident
of Clark County, Nevada.

2. Hernandez was a Senior Risk Coordinator with the Company.

3. Defendant is a Nevada corporation registered to, and conducting business in,
Nevada.

21 8. This action is brought pursuant to the Americans with Disabilities Act ("ADA"),
22 42 U.S.C. § 1201, et. seq. and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et.
23 seq.

10. This action also arises out of claims from Nevada's anti-discrimination statutes,
N.R.S. § 613.330, as well as claims arising under the common law of the State of Nevada.
These claims are so related to the claims in the action within the original jurisdiction of this

1 Court that they form part of the same case or controversy under Article III of the United States
2 Constitution. As such, these claims are properly within the Court's jurisdiction pursuant to 28
3 U.S.C. § 1367(a).

4 11. Hernandez filed her Charge of Discrimination with the United States Equal
5 Employment Opportunity Commission ("EEOC") in a timely fashion on March 3, 2016.

6 12. Hernandez received a Right to Sue Letter less than ninety days prior to filing
7 this Complaint.

8 13. Hernandez has satisfied all administrative and jurisdiction conditions
9 precedent to filing this Complaint.

10 14. Hernandez began employment with the Company on or about May 15, 2006.

11 15. Hernandez' most recent position with the Company was Senior Risk
12 Coordinator.

13 16. On October 1, 2014, Hernandez injured her right hand at work.

14 17. Hernandez notified Ms. Trina D'Arienzo ("D'Arienzo"), the Unit Manager, at the
15 time of the injury.

16 18. Hernandez and D'Arienzo went to the Guard's Station and D'Arienzo filled out
17 the injury form.

18 19. While at the Guard's Station the guard on duty made a comment, "Wow
19 another, a lot of people have gotten hurt on those chairs."

20 20. After filing out the injury form, D'Arienzo sent Hernandez home with no further
21 instructions.

22 21. Hernandez went to UMC Quick Care and was informed she had a right wrist
23 sprain. She was given a doctor's note with temporary work restrictions from October 1, 2014
24 to October 8, 2014. However, Hernandez' doctor extended the temporary work restrictions on
25 her next appointment.

26 22. Hernandez received a letter and a phone call from her Worker's Compensation
27 Case Manager, Mr. Eric Brong ("Brong") on October 22, 2014. Brong advised Hernandez that

1 he would be her contact regarding her Worker's Compensation Case moving forward.
2 However, Hernandez still updated Mr. Robert Tate ("Tate"), Department Manager, and
3 D'Arienzo on her condition.

4 23. On November 12, 2014, Tate and D'Arienzo sent Hernandez home explaining
5 there were no light duty options available. In addition, D'Arienzo told Hernandez that she will
6 call her when the Company decides what to do about her position.

7 24. Hernandez Worker's Compensation Case was approved on November 15,
8 2014.

9 25. Ms. Juanita Lopez ("Lopez"), Unit Manager, called Hernandez on December 4,
10 2014. Lopez told Hernandez that she was Hernandez' new Unit Manager. Lopez inquired why
11 Hernandez had not been calling out daily through the Call Out Center. As per, Tate and
12 D'Arienzo, Hernandez explained she did not have to call out while on Worker's Compensation
13 Leave. Lopez asked when Hernandez was coming back to work. Hernandez stated she was
14 unsure when she could be released back to work without restrictions. Lopez explained to
15 Hernandez that she was calling to let Hernandez know that some associates got a raise but
16 Hernandez did not get one. Hernandez requested Lopez not to call while she is out on leave.

17 26. Hernandez' doctor released her back to work on December 31, 2014.

18 27. Hernandez returned to work on January 5, 2015. However, her access to her
19 work area had been revoked.

20 28. When Hernandez returned to work on January 8, 2015, Hernandez was told by
21 Lopez that she received a major infraction on a phone call from October 26, 2014, almost
22 three weeks before Hernandez was sent home by Tate and D'Arienzo because there were no
23 light duty options available.

24 29. Hernandez asked Lopez why the Unit Manager who graded the quality of the
25 call did not discuss with Hernandez before she went on Worker's Compensation Leave. Lopez
26 had no response.

27 30. Hernandez requested a copy of the Unit Manager's notes for scoring the call.

1 Again, Lopez had no response.

2 31. Hernandez stated she needed proof of the call if she was going to sign the
3 coaching form for the major infraction. Hernandez believed the call never occurred. Lopez
4 became upset, told Hernandez she did not have to sign, and she was adding the major
5 infraction to her file.

6 32. Hernandez requested a meeting with, Mr. Michael Wiese ("Wiese"),
7 Department Manager, to discuss her alleged major infraction, the new incentive and appraisal
8 program, and her lack of access.

9 33. From around 2015 through the present, Hernandez was denied bonuses.

10 34. Hernandez believes she was discriminated against because of her disability, or
11 being regarded as disabled, and retaliated against for engaging in protected activity, in
12 violation of the Americans with Disabilities Act of 1990, as amended.

13 **FIRST CLAIM FOR RELIEF**

14 **(Violation of the ADA & N.R.S. § 613.330)**

15 35. Hernandez repeats and realleges the allegations above as if fully set forth
16 herein.

17 36. Hernandez had a disability as defined by the ADA and/or N.R.S. § 613.330, et.
18 seq.

19 37. Defendant knew Hernandez was disabled or regarded her as disabled, as
20 alleged in paragraphs 22 through 25, above, which are reincorporated by this reference.

21 38. Hernandez' disability impaired the major life activity of working. With a
22 reasonable accommodation, however, she could perform the essential functions of the
23 position.

24 39. Because the Company failed to engage in the interactive process to
25 accommodate Hernandez' condition, she suffered discrimination in violation of the ADA.

26 40. As a direct and proximate cause of the Company's violations of failing to
27 accommodate her or engage her in the interactive process, as alleged in paragraphs 22

1 through 25, above, which are reincorporated herein, Hernandez has been damaged in an
2 amount to be determined at trial.

3 41. Hernandez has been forced to procure the services of an attorney to represent
4 her in this matter and, pursuant to 42 U.S.C. § 12205, Hernandez is entitled to her attorneys'
5 fees.

6 42. Hernandez is entitled to both compensatory and punitive damages because of
7 the Company's violations of the ADA.

8 43. Furthermore, the Company's actions were malicious, oppressive, fraudulent
9 and/or done with reckless indifference to Hernandez' rights, thus justifying an award of
10 punitive damages.

11 **SECOND CLAIM FOR RELIEF**

12 **(Retaliation re: ADA, Title VII & NRS 613.340)**

13 44. Hernandez repeats and re-alleges each and every allegation set forth in the
14 foregoing and following paragraphs as if fully set forth herein.

15 45. The ADA, Title VII of the 1964 Civil Rights Act, and N.R.S. § 613.340 render it
16 illegal to terminate an employee if they engage in a protected activity.

17 46. Hernandez engaged in a protected activity by requesting worker's
18 compensation from the Company.

19 47. The Company failed to accommodate Hernandez' need for a reasonable
20 accommodation, failed to engage Hernandez in the interactive process and retaliated against
21 her by fabricating reasons to terminate her after she filed a worker's compensation claim.

22 48. The Company's actions were retaliatory and contrary to Nevada public policy.

23 49. As a direct and proximate cause of the Company's acts, Hernandez has been
24 damaged in an amount to be determined at trial.

25 50. The Company's actions were malicious, oppressive, fraudulent or done with
26 reckless indifference to Hernandez' rights, thus justifying an award of punitive damages.

27 51. Hernandez has been forced to procure the services of an attorney in this matter

1 and Hernandez is thus entitled to an award of attorneys' fees as a consequence.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Hernandez requests a judgment against the Defendant as follows:

- 4 1. For a trial by jury;
- 5 2. For compensatory damages and punitive damages;
- 6 3. Prejudgment interest;
- 7 4. For reasonable attorneys' fees and costs; and
- 8 5. Such other relief this Court deems just and proper.

9 **JURY DEMAND**

10 Pursuant to Fed. R. Civ. P. 37, the Seventh Amendment to the Constitution of the

11 United States, as well as Article 1, Section 3 of the Constitution of the State of Nevada,

12 Hernandez hereby demands a jury trial for each of her claims for relief.

13 Dated: Monday, June 6, 2016

14 Respectfully Submitted By:

15 **LAW OFFICES OF STEVEN J. PARSONS, ESQ.**

16 By: /s/ Andrew L. Rempfer, Esq.

17 Andrew L. Rempfer, Esq.

18 Jennifer D. Golanics, Esq.

19 **ATTORNEYS FOR PLAINTIFF**

20 **ADELINA HERNANDEZ**

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